



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 4954/2004

LRs of Sayar Singh

1/1. Ishwar Singh son of Late Sayar Singh by caste Rajput aged about 54 years, resident of Village Tanwara, Post Tanwara, Vai Jaswantgarh, Tehsil Ladnoo, District Nagaur.

1/2. Hardayal Singh son of Late Shri Sayar Singh aged about 38 years, by caste Rajput, resident of Shiv mandir, Bhind Railway Godown, Ward No. 44, Sujangarg, District Churu.

1/3. Swaroop Kanwar daughter of Late Shri Sayar Singh and wife of Shri Sharwan Singh, aged about 51 years, resident of village jakhal, District Jhunjhunu.

1/4 Sampat Kanwar daughter of Late Shri Sayar Singh and wife of Shri Raghuvir Singh, aged about 45 years, resident of Badh Ki Dhani, Village Bhoraki, District Jhunjhunu.

-----Petitioners

Versus

1. State Bank Of India through its Chairman, SBI Head Office, Corporate Centre SBI Bhavan, Madam Cama Road, Nariman Point, Mumbai.

2. The Chief General Manager- I, State Bank of India, Local Head Office, Tilak Marg, "C" Scheme, Jaipur.

3. The Deputy General Manager, State Bank of India, Administrative Office-III (SBI Zonal Office), Bikaner, Public Park Near Collector Office, Bikaner.

4. Regional Manager, State Bank of India, Regional Office -VI, Main Branch Premises, Near Lal Ghantaghar, Churu.

5. The Branch Manager, State Bank of India, Sabjimandi, Sujangarh.

6. The Chief Manager, State Bank of India Centralised Pension Processing Centre, SMS Highway, Jaipur.

7. Indian Bank Association through its Secretary, Stadium House, 6th floor, Veer Nariman Road, Mumbai.



8. Union of India through Secretary, Ministry of Finance, Banking Division, Government of India, New Delhi.

----Respondents

For Petitioner(s)	:	Mr. Ram Kishore Soni
For Respondent(s)	:	Mr. Chayan Bothra

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Judgment

Reportable

21/12/2023

Per Dr. Pushpendra Singh Bhati, J:

1. The LR's of petitioner – Sayar Singh has preferred this petition claiming the following prayers:-

"(i) the afore-quoted words "Resignation" and "or termination" as mentioned in aforequoted regulations 22, the words "On or after the 1st day of November, 29, 1993 as mentioned in regulation 29, and the words "on or after 1st day of November, 1993" as mentioned in regulation 30 & proviso (I) to regulation 31 (I) of the State Bank of Bikaner and Jaipur (Employees) Pension Regulations, 1995 may kindly be declared ultra-vires the Constitution of India and may kindly be quashed. Alternatively, the same may be harmoniously construed and read down so as to grant pensionary benefits to the petitioner under regulations 3 read with regulation 35(6) and regulation 3(5) of the above pension regulations with all consequential benefits to the petitioner.

(ii) the order No.Pension/1193 dated 19.01.2000 (annexure-P/17) may kindly be quashed and set aside the petitioner may kindly be granted all pensionary benefits including the arrears of pension, commutation of pension



and monthly pension by treating his retirement as retirement on medical ground.

(iii) Alternatively and without prejudice to any other submission the petitioner may kindly be granted all pensionary benefits treating his retirement as premature or voluntary retirement by reading down the provisions of the above pension regulations or by treating the petitioner's case as a special case and relaxing the provision of the pension regulations. As the last alternate, the petitioner may kindly be granted compassionate allowance or ex gratia at least treating his case as a special case."

2. As the pleaded facts would reveal, the original petitioner (since expired during pendency of this petition on 28.12.2004) represented through his LRs i.e. petitioner Nos.1/1 to 1/4 was appointed on the post of Guard in the respondent - bank w.e.f. 09.01.1963 after due selection process. In the year 1980, during the course of employment in the Bank, the original petitioner suffered a railway accident, as a result of which, his right leg was amputated from ankle. The original petitioner also suffered other ailments which included chronic bronchitis and other lung issues; the same is reflected in the medical certificate dated 10.01.1990, which is available on record.

3. The original petitioner moved an application on 02.11.1989 for his pre-mature retirement on medical grounds, while he was in service. The application was then forwarded to the Regional Manager who accepted the request of the petitioner looking into his physical condition as reflected in Annexure P-4 and thereafter vide letter dated 25.11.1989 (Annexure P-5) required the original petitioner to resign from his services before his son



could be given appointment and in compliance of the same another application dated 28.11.1989 was submitted by him whereafter, the original petitioner finally retired from the Bank's service on 31.12.1989. In view of the original petitioner's retirement on medical grounds, his son Hardayal Singh (present petitioner No.1/2) was given appointment in the Bank.

4. Learned counsel for the petitioners (LRs of original petitioner) submits that the retirement was sought through resignation, after completion of 26 years of satisfactory services and it was only on count of the fact that while drafting of the said letter, the word whereafter, 'resignation' was used instead of the word 'retirement' and resultantly, the original petitioner was deprived of his pension despite the fact that he complied with and acted upon the advise so given by the respondents at the time of submitting his application for resignation in question.

4.1 Learned counsel further submits that the word used in the aforesaid letter should have been 'retirement' which was in accordance with the Circular in vogue for the said purpose and learned counsel has shown from Annexure-5 that the original petitioner was acting in accordance with the Circular No.PER/48/83 dated 31.05.1983 which was being insisted upon by the respondent authorities. The original petitioner being on the post of Peon could not have understood the ramifications of the Circular No.PER/48/83 and proceeded to use the word 'resignation' as advised by the respondent. However, as per the said Circular itself, it was permissible for him to apply for retirement while seeking compassionate appointment for his son.



4.2 Learned counsel also submits that the respondents have failed to consider the case of the original petitioner in the right perspective, despite the fact that he has rendered 26 years of satisfactory services with the Bank and the essential statutory benefit of pension has been denied to him merely on the technicality of using the word 'resignation' instead of 'retirement' as required by the aforementioned Circular; moreover the said circular did not mandatorily provide for such usage. It is further submitted that the respondents are becoming hyper-technical in the matter of granting benefit of pension to the original petitioner which he is entitled to but such benefit is being denied to him despite prolonged correspondence and consideration by the respondents. It is further submitted that pension is a recurring cause of action and any minor delay will not affect the legitimate entitlement of the original petitioner.

4.3 Learned counsel further submits that the respondent-Bank itself treated the entire proceedings as original petitioner's premature retirement on medical grounds as is revealed from the letter dated 26.12.1989 by Regional Manager (Annexure-P/7). Learned counsel has also drawn the attention of this Court to Regulations 29, 30, 31 and 32 of the Bank (Employees) Pension Regulations, 1995 (in short, '*the Regulations of 1995*'), relevant provisions whereof read as under:-

"29. Pension on Voluntary Retirement--

(1) On or after the 1st day of November, 1993 at any time after an employee has completed twenty years employee of has qualifying service he may by giving notice of not less than three months in writing to the competent authority retire from provided.....

(2).....



(3) (a) An employee referred to in this sub- regulation(1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefore;

(b)....

(4)..... (5)..... (6).....

30. Invalid Pension-

(1) Invalid pension may be granted to an employee who,--

(a) has rendered minimum ten years of service; and

(b) retires from the service, on or after the 1st day of November, 1993 on account of any bodily or mental infirmity which permanently incapacitates him for the service.

.....

31. Compassionate Allowance-

(1) An employee, who is dismissed or removed or terminated from service, shall forfeit his pension:

Provided that the authority higher than the authority competent to dismiss or remove or terminate him from service may, if-

(i) such dismissal removal, or termination is on or after the 1st day of November 1993; and

(ii) the case is deserving of special, consideration sanction a compassionate allowance not exceeding two-thirds of the pension which would have been admissible to him on the basis of the qualifying service rendered up to the date of his dismissal, removal or termination.

.....

32. Premature Retirement Pension--

Premature Retirement pension may be granted to an employee who,--

(a) has rendered minimum ten years of service;

(b) retires from service on account of orders of the Bank to retire prematurely in the public interest or for any other reason specified in service regulations or settlement, if otherwise he was entitled to such pension on superannuation on that date."





4.4 Learned counsel for the petitioner (deceased) has referred to relevant provision of Regulations 2(y), 3 and 22 of the Regulations of 1995, which read as under:-

"2.Definitions:

(a).....

(y) "retirement" means cessation from Bank's service,

(a) on attaining the age of superannuation specified in Service Regulations or Settlements

(b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulation;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement. "

3. Application--

These regulations shall apply to employees who,--

(1) (a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993; and

22.Event of disqualification--

(1) Resignation or dismissal or removal or termination of an employee from the service of Bank including that of an employee who is deemed to have voluntarily retired from the Bank's service in terms of the provision for voluntary cessation of employment contained in Bipartite Settlement shall entails forfeiture of entire past service and consequently shall not qualify for pensionary benefit;
...."

4.5 Learned counsel also drew the attention of this Court to Regulations 2Y, 3 and 22 of the Regulations of 1995 as quoted above. It is further submitted that the entitlement of pension, which in accordance with the relevant regulations was in vogue for the people who are in service.





4.6 It is further submitted that a person was entitled to pension, if he was in service on the first day of January, 1986 and retired before first day of January, 1993 and the original petitioner absolutely fits into the dates as he was appointed on 09.01.1963 and thereafter retired on 31.12.1989. Learned counsel also submits that mere drafting error committed due to erroneous prompting by the respondents cannot wipe off the 26 years of satisfactory service which are to the credit of the original petitioner.

5. On the other hand, learned counsel for the respondents while opposing the aforesaid submissions made on behalf of the petitioner (LRs of original petitioner), drew the attention of this Court to Regulation 22 of the Regulations of 1995 as quoted above, which clearly provides disqualification to a person who either resigned or was dismissed, removed or terminated from service by the Bank. He further submits that once the original petitioner consciously chose to resign, then it was not open for him to come back and claim the pension at this stage.

5.1 Learned counsel for the respondents has further drawn the attention of this Court to Circular No.PER/48/83 which was the condition for recruitment of dependents of an employee leaving the Bank service on medical grounds. He has referred to paragraph 1 & 2 of Circular No.PER/48/83, relevant portion whereof is being reproduced as hereunder:-

"1. Please refer to our Circulars No.PER/21/79 and PER/35/79 dated the 12th April 1979 and 31st May 1979 for appointment of dependants of deceased employees on compassionate grounds in Clerical/Subordinate staff cadre and officers cadre respectively. The scheme does not cover



the cases where employees have to retire prematurely on account of incapacitation from further services on medical grounds.

2. It has been decided to consider the cases of sons/daughters/near relatives of employees who are compelled to give up the Bank's job on medical grounds, for appointment in the Bank's service on compassionate grounds on the following terms and conditions:-

(i) The benefit of compassionate appointments will be extended to the dependents of the officials/employees who are incapacitated by accidents or serious ailments like paralysis, cancer, blindness etc. while in service and are compelled to leave the Bank's service before their normal retirement age.

(ii) All such cases of appointments on compassionate grounds shall be made only with the prior approval of the Executive Committee.

(iii) The benefit will not be extended to a case where the Bank employee has retired on or after attaining the age of 55 years.

(iv) The benefit will normally be restricted to the wife, son or daughter of an employee who is compelled to leave the Bank's service on medical grounds. The benefit will be extended to a near relative other than the wife, son or daughter of an employee only in very exceptional circumstances where it is established to the satisfaction of the Bank that such a near relative will in fact be the breadwinner of the family.

(v) The application for appointment on compassionate grounds shall ordinarily be received immediately on the retirement of an employee and should in no case be entertained after sixty days of the date of cessation of service of such employee.

(vi) Any employee whose services have been terminated by the Bank on medical grounds shall also be deemed to have left the Bank's service on medical grounds for the purpose under reference notwithstanding that he has not been retired on medical grounds."





5.2 Learned counsel for the respondents further submits that the deceased was required to give up his pension for the purpose of compassionate appointment of his son, and he consciously chose the path of resignation, which is apparent from his letters written to the respondents, and thus, at this stage, he cannot make a reverse turn and claim pension, which he has foregone consciously to make a lawful passage for his son to be given compassionate appointment.

5.3 Learned counsel has relied upon the judgment rendered by the Hon'ble Apex Court in the case of **BSES Yamuna Power Limited Vs. Ghanshyam Chand Sharma and Anr. (2020) 3 SCC 346**, relevant portion of which is reproduced as under:-

"14. In the present case, the first respondent resigned on 7-7-1990 with effect from 10-7-1990. By resigning, the first respondent submitted himself to the legal consequences that flow from a resignation under the provisions applicable to his service. Rule 26 of the Central Civil Service Pension Rules, 1972 (the CSS Pension Rules) states that:

26. "Forfeiture of service on resignation-

(1) Resignation from a service or post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails a forfeiture of past service."

Rule 26 states that upon resignation, an employee forfeits past service. We have noted above that the approach adopted by the Court in Asger Ibrahim Amin has been held to be erroneous since it removes the important distinction between resignation and voluntary retirement. Irrespective of whether the first respondent had completed the requisite years of service to apply for voluntary retirement, his was a decision to resign and not a decision to seek voluntary retirement. If this Court were to re-classify his



resignation as a case of voluntary retirement, this would obfuscate the distinction between the concepts of resignation and voluntary retirement and render the operation of Rule 26 nugatory. Such an approach cannot be adopted. Accordingly, the finding of the Single Judge that the first respondent "voluntary retired" is set aside."

5.4 Learned counsel for the respondents also submits that the compassionate appointment was a benefit, which accrued to the dependents of the original petitioner in light of the fact that original petitioner has discharged 26 years of satisfactory services and resigned in lieu of grant of compassionate appointment to his son which was a necessary condition. It is further submitted that apart from the above, there is also a delay in filing of the petition.

6. Heard learned counsel for the parties at length as well as perusing the record of the case along with the judgment cited at the Bar.

7. This Court finds that the original petitioner was appointed as Guard through regular selection process on 09.01.1963, and while discharging the duties in the Bank, he met with an accident in the year 1980, which resulted into amputation of his right leg from ankle, and thus, his initial appointment as Guard was converted into that of a Peon. This Court also takes note of the fact that the original petitioner's medical certificate shows other ailments as well. The original petitioner submitted his resignation on 31.12.1989, while seeking compassionate appointment for his son, which was appropriately given by the respondents in accordance with the Circular No.PER/48/83.



8. This Court on a careful reading of the aforesaid Circular finds that the benefit of compassionate appointment was to be extended to the dependents of the employees, who were incapacitated due to an accident and were compelled to leave the Bank's service before normal retirement age. The Circular nowhere prescribes a condition precedent for a person to resign, and simply speaks of leaving of service, by a person on medical grounds, and thus, the Circular does not indicate a single word to the effect that a person would be entitled to compassionate appointment for his dependents only if he resigns resultantly foregoing his entitlement to pension, and thus, the basic argument of the respondents falls flat.

9. This Court has perused the Regulations of 1995 which renders a person eligible for pension, if he is within the bracket of service between 01.01.1986 to 01.11.1993, and it is undisputed that the original petitioner is within the said bracket and retired from service on 31.12.1989. This Court is conscious of the fact that the Regulations of 1995 entitles a person to receive pension in accordance therewith after furnishing complete details. It is also noted by this Court that the Provident Fund amount initially paid to the original petitioner was recovered vide Annexure P-15. This Court also takes note of order dated 03.08.1995 (Annexure P-15), whereby the original petitioner was given an option to claim pension, however, provident fund already paid was deducted with interest. Such tentative calculation was not given effect to, and the same gave a cause of action to the original petitioner to approach this Court by way of filing the instant petition.



10. On a conjoint reading of the Circular No.PER/48/83 as well as the Regulations of 1995, the original petitioner should have become entitled had he not gone strictly by the advice given by the Bank authorities, whereby he was asked to resign, whereas there was no legal requirement for him to give resignation and on being prematurely retired on medical grounds, he should have been entitled to get compassionate appointment for his son as well as the pension he had earned in lieu of 26 years of satisfactory service. There is not an iota of reflection in the Circular No.PER/48/83 that for the purpose of compassionate appointment, it was a condition precedent that a person has to forego his pension in the shape of tendering his resignation, thus the conduct of the respondents in depriving a person of his hard-earned pension after a pro-longed service along with the misfortune that his right leg stood amputated during the course of the service is not sustainable in the eye of law.

11. This Court also takes note of the fact that the Regulations of 1995 provides a date bracket, as per which the original petitioner strictly falls within such bracket and thus the computation ought to have been given effect to, but despite the same, the provident fund in question was recovered with interest, and ground taken by the respondents was that there was no other option available with the bank except to go by the Regulations of 1995 which provide that a person would not be entitled to pension if he has resigned, the same is nothing but a hyper-technical view taken by the respondents and such a situation has been created by respondent authorities, as revealed by the aforesaid backdrop of the case.



12. This Court is further conscious of the fact that the usage of the particular word 'resignation' in the present case, which too was used under the advice of the Bank authorities, has been pressed against the original petitioner by the Bank, which is an entity covered under the definition of 'State', as contained in Article 12 of the Constitution of India, just to deprive a person of his legitimate right of pension, is nothing but an exploitation of a person belonging to the lowest pedal (Peon) of the ladder of the employees with the respondents.

13. Thus, in the given circumstances, this Court is left with no other option, but to read down the word 'retirement' instead of the word 'resignation', as there is nothing on record which could show in specific terms that after 26 years, the original petitioner could not have sought retirement in lieu of grant of compassionate appointment for his son by acting in accordance with Circular No.PER/48/83, and thus, the error in question occurred only because of the advice given by the Bank officials to the original petitioner.

13.1. This observation is also in view of the fact that to a term – whether 'resignation' or 'retirement' – as in the present case, the purposive interpretation of the term has to be made, as it would result, amongst others, in simplification of judicial task of advancement of the very purpose behind the Circular/Regulations in question, in the given factual matrix.

13.2. This Court is conscious of the fact that that a person (original petitioner herein), who was otherwise fully entitled to receive the pension, as per his length of service as well as the conditions prescribed in the pension regulations. Even when





compassionate appointment, on count of his premature retirement on medical grounds has to be given pension as per the aforesaid Circular, he cannot be denied the benefit of pension only and only on count of the fact that a vocabulary of 'retirement' was substituted by 'resignation'. Mere change in vocabulary cannot deprive a person, like the original petitioner herein of the fundamental right to receive pension in lieu of the services rendered as he was otherwise fully qualified for the same.

14. This Court takes a view that it is a serious breach of responsibility, on the part of the respondents to deny pension to the original petitioner for so long, even when he rendered 26 years of satisfactory services and remained to be a handicapped person on account of an accident, which he suffered during the course of employment. There is no doubt that the word 'resignation' is a disqualification for the purpose of pension as per the Regulations of 1995 but this Court has gone into the facts and circumstances of the present case wherein the respondents virtually compelled the original petitioner by advising him to use the word 'resignation' in his application, whereas it was required that the employee was to be discharged from service. As per the said Circular pre-mature retirement did not create any condition precedent wherein the original petitioner was required to go ahead and give his resignation for getting the benefit of compassionate appointment for his son. It is a well-settled law that pension is a recurring cause of action and looking into the factual matrix of the case, the present writ petition deserves to be allowed.



15. As the preposition of the prayer does not involve adjudication on the validity of Regulations of 1995 and qua the word 'resignation' same is not pressed by the learned counsel for the original petitioner, therefore, this Court is not required to go into the same because this is a case where the resignation was not even required to be given in his application and apparently, as per the aforesaid Circular and Regulations of 1995 he was to retire from the services on medical grounds and thus, he was entitled for the pensionary benefits of 26 years of service which was rightly computed by the respondents vide Annexure P-15 and ought to have been given in the same terms.

16. In view of the above observations, the present writ petition is **allowed** and impugned order dated 19.01.2000 (Annexure-P/17) stands quashed. The respondents are directed to grant all pensionary benefits including the arrears of pension, commutation of pension and treating the original petitioner to be retired on medical grounds in accordance with Circular No.PER/48/83. While reading down such application, this Court has kept into consideration the Regulations of 1995 and the Circular. The pensionary benefits shall be given equitably to his legal representatives-petitioners No.1/1 to 1/4 within a period of three months from receiving the certified copy of the order. In case, any retiral dues have already been paid, the same shall be deducted from the amount of pension.

(RAJENDRA PRAKASH SONI),J

(DR.PUSHPENDRA SINGH BHATI),J

61-Payal/-Divya